

United States Bankruptcy Court  
Eastern District of Michigan  
Southern Division

In re:

Brigantine Development, LLC,  
Debtor.

Case No. 03-42046-R  
Chapter 11

\_\_\_\_\_/

Brigantine Development, LLC,  
Plaintiff,

v.

Adv. No. 03-4561

Mid-States Contracting, Inc., GRS Corp.,  
Robert Pasek, and Nicholas Piccirilli,  
Defendants.

\_\_\_\_\_/

Opinion

I.

On October 27, 2004, the Court issued an opinion in this adversary proceeding finding the defendant, Robert Pasek, personally liable to Brigantine Development, LLC, in the amount of \$617,257.89 for a violation of the Michigan Builder's Trust Fund Act. Pasek filed an appeal challenging this Court's determination of liability and this Court's September 21, 2004, order striking certain exhibits attached to Pasek's trial brief.

On May 10, 2005, the district court issued a Memorandum and Order affirming, in part, and reversing, in part, this Court's decision. The district court affirmed the Court's finding of Pasek's personal liability for violating the Michigan Builder's Trust Fund Act. However, the district court held that the Court abused its discretion by striking the exhibits attached to Pasek's trial brief. The district court remanded the matter for a determination as to whether Pasek should be entitled to any

credit for labor expenses during the relevant time period, based on the record including the exhibits attached to Pasek's original trial brief.

On May 19, 2005, the Court issued an order requiring the parties to file briefs on the issue and taking the matter under advisement.

## II.

Pasek asserts that he is entitled to credit for \$269,375.59 for labor expenses incurred on the Brigantine Project. He contends that Brigantine has stipulated to the amount of funds that were spent on labor costs. Pasek asserts that exhibit 2A attached to his brief represents checks made payable to the laborers on the project for the months of September through December, 2001.

Pasek contends that the first check issued to R&D on September 28, 2001 for \$198,892 was deposited into GRS's Comerica account on October 2, 2001. Pasek asserts that of this amount, GRS issued 5 checks back to R&D totaling \$87,000 throughout the month of October to cover payroll on the Brigantine project. Pasek argues that R&D's labor expenses for September and October actually exceeded \$87,000.

Pasek contends that the second check, dated November 5, 2001, in the amount of \$484,027.50, was also deposited into GRS's Comerica account. Pasek asserts that of that amount, GRS transferred \$150,000 to R&D on November 2, 2001 for payroll on the Brigantine project. Pasek also contends that GRS issued three checks totaling \$190,000 to Mid-States on November 2, November 2, and November 10, 2001. Of this amount, Pasek argues that Mid-States issued the following checks back to R&D to cover payroll: November 28, 2001, for \$20,000; November 9, 2001, for \$20,000; November 15, 2001 for \$15,000; and November 20, 2001 for \$15,000.

Pasek provided copies of checks from the Comerica payroll account for the months of

September, October, November and December 2001 which he asserts support the labor expenses claimed. He also provided, as part of his original trial exhibits, copies of daily time sheets for the Brigantine project. (Def's Ex. 2.)

Brigantine contends that it did not stipulate that R&D incurred labor expenses of \$269,375.59 on the project. Further, Brigantine asserts that the copies of checks provided by Pasek for labor do not indicate that they were for work on the Brigantine project. Brigantine asserts that R&D had multiple projects underway at the same time as the Brigantine project and that R&D regularly claimed credit on the Brigantine project for work that was performed on other projects.

Brigantine also contends that the relevant time period for labor expenses was October and November 2001. Therefore, Brigantine contends that the Court must disregard any alleged labor expenses paid outside of that time period.

### III.

Pasek has the burden of proof to account for the funds. *Cappella v. Little (In re Little)*, 163 B.R. 497 (Bankr. E.D. Mich. 1994). *See also Reynolds Elec., Inc. v. Hickey (In re Hickey)*, 1999 WL 33313133 (E.D. Mich. Sept. 30, 1999); *Kriegish v. Lipan (In re Kriegish)*, 275 B.R. 838 (E.D. Mich. 2002). *But see James Lumber Co. Inc. v. J & S Constr., Inc.*, 309 N.W.2d 925 (Mich. App. 1981).

The Court agrees that contrary to Pasek's assertion, Brigantine has not stipulated to any amount of labor expenses.

As noted in the prior opinion, there were two payments from Brigantine at issue. The first payment, in the amount of \$198,892, was deposited into GRS's account # 1840202830 on October 2, 2001. Pasek contends that of that amount, the following 5 checks were issued back to R&D to cover payroll expenses:

Date	Check #	Amount
10/01/01	3545	\$15,000
10/04/01	3554	\$30,000
10/12/01	3575	\$20,000
10/19/01	3593	\$12,000
10/26/01	3604	<u>\$10,000</u>
Total:		\$87,000

The first check, dated October 1, 2001, was transferred from the GRS account to the R&D account before the \$198,892 was deposited into the GRS account on October 2, 2001. Therefore, it cannot be considered part of the \$198,892.

The second payment from Brigantine, in the amount of \$484,027.50, was deposited into the GRS Comerica account #1840202830 on November 2, 2001. (See Pl's Ex. 22.) GRS then issued a \$150,000 check to R&D. Pasek contends that this was used for payroll. GRS also issued three checks to Mid-States totaling \$190,000. (See Def's Ex. 14.) Pasek contends that of these funds, Mid-States transferred \$63,000 to the R&D payroll account for payroll expenses on the Brigantine project.

The Court must therefore determine whether Pasek has adequately accounted for the funds which he contends were used for payroll expenses.

Pasek provided daily time sheet logs for the Brigantine project which show the number of hours worked each day by the various laborers. (Def's Trial Ex. 1.) Pasek also provided copies of canceled payroll checks. (Def's Br. on Remand, Ex. 2A.) In order for the Court to determine whether Pasek has adequately accounted for the payroll expenses, it was necessary for the Court to compare the daily time sheets to the checks submitted to determine whether each employee paid did in fact perform work on the Brigantine project during the various time periods.

The Court finds that Pasek cannot be given credit for any labor expenses paid prior to October 4, 2001, because that is the date of the first check the Court can consider from the GRS account to the R&D account.

Pasek submitted 11 checks issued by R&D dated October 5, 2001 for the period September 23, 2001 to September 29, 2001 totaling \$7,579.03. The daily report sheets for that time period support the labor expenses with the exception of the check issued to David Farnsworth II. That check is for 32 hours of work. However, the daily report sheet shows only 2 hours worked by Farnsworth on the Brigantine project during that period. Therefore, Pasek will only receive credit for \$44.52 of that check. The total credit for that pay period is therefore \$7,041.27.

Pasek submitted 14 checks issued by R&D dated October 12, 2001 for the period September 30, 2001 through October 6, 2001 totaling \$9,143.97. The daily report sheets support the labor expenses for this period, with the exception of the check issued to David Farnsworth. There is no labor record for him for this time period. Therefore, Pasek cannot be given credit for the \$680 check to Farnsworth. The total credit for this pay period is therefore \$8,463.97.

Pasek submitted 15 checks issued by R&D on October 19, 2001 covering the period October 7, 2001 to October 13, 2001 totaling \$8,882.25. The daily reports for that period did not show any record for the following employees to whom checks were issued: Mario Cucinella, David Farnsworth, Bobby Musko, and Jeffrey Chapel. Accordingly, Pasek will not receive credit for these checks totaling \$2,194.59. The total credit for this pay period is therefore \$6,687.66.

Pasek provided 15 checks issued by R&D on October 26, 2001 for the period October 14, 2001 through October 20, 2001 totaling \$9,799.37. The daily report sheets for that period support the labor expenses. Pasek will therefore receive credit for \$9,799.37.

Pasek provided 18 checks issued by R&D on November 2, 2001 for the period October 21, 2001 through October 27, 2001 totaling \$11,655.08. The daily reports for that period support the labor expenses. Pasek will therefore receive credit for \$11,655.08.

Pasek submitted 19 checks issued by R&D on November 9, 2001 for the period October 27, 2001 through November 3, 2001 totaling \$13,034.46. The daily reports for that period support the labor expenses. Pasek will therefore receive credit for \$13,034.46.

Pasek submitted 18 checks issued by R&D on November 16, 2001 for the period November 4, 2001 through November 10, 2001 totaling \$14,215.81. The daily reports for that period support the labor expenses. Pasek will therefore receive credit for \$14,215.81.

Pasek submitted 15 checks issued by R&D on November 23, 2001 for the period November 11, 2001 through November 17, 2001 totaling \$10,176.30. The daily reports for that period did not reflect any work done by the following employees to whom checks were issued: Mario Cucinella, Cliff Burleson, Robert Whitmore, and Brian Rooker. The Court must therefore deduct \$2,206.06 from the amount submitted. Pasek will receive credit for \$7,970.24.

Pasek submitted 16 checks issued by R&D on November 30, 2001 for the period November 18, 2001 through November 24, 2001 totaling \$7,628.96. The daily reports for that period did not reflect any work done by Paolo Licavoli. His check for \$513.58 will be deducted. Pasek will therefore receive credit for \$7,115.38 for that period.

The Court therefore concludes that Pasek had adequately accounted for \$85,983.24 in labor expenses on the Brigantine project. The amount of the original judgment entered by the Court was \$617,257.89. An amended judgment will be entered awarding the plaintiff \$531,274.65.

\_\_\_\_\_/s/\_\_\_\_\_  
Steven Rhodes  
Chief Bankruptcy Judge

Entered: September 15, 2005

cc: Robert Charles Davis  
Michael R. Wernette

Not for Publication